ATTORNEY FOR APPELLANT:

JOHN A. KESLER II
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ELLEN H. MEILAENDER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BRYAN K. CATLETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 84A01-0606-CR-257
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE VIGO SUPERIOR COURT, DIVISION 3
The Honorable David R. Bolk, Judge
Cause No. 84D03-0510-FB-2847

April 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Following a jury trial, Appellant, Bryan K. Catlett, was convicted of one count of Receiving Stolen Property as a Class D felony. Upon appeal, Catlett presents two issues for our review, which we restate as (1) whether the evidence is sufficient to support his conviction, and (2) whether the trial court erred in denying Catlett's motion to sever charges.

We affirm.

The facts most favorable to the conviction reveal that on October 8, 2005, Shawn Yochum reported to the Terre Haute Police Department that someone had broken into his residence on South 6th Street, taken his car keys, and stolen his blue 1995 Chevrolet Monte Carlo. Eight days later, on October 16, 2005, Brian Hill reported to the police that his duplex on South 6th Street had been burglarized. Hill, and some of his friends, including Justin Lien, had returned to the duplex early that morning and noticed a white van parked nearby. They also saw a man walking from the duplex and approach the van, in which sat another man. The man walked from the house, got into the passenger seat of the van, and he said, "go, go, go," and the van drove away. Tr. at 93, 150, 152. Hill went into the duplex and noted that someone had entered and taken a laptop computer, poker chip set, and a bottle of cologne. Hill telephoned the police and reported the burglary and the white van in which the suspects had fled.

The police soon found the white van, with Carlton Anderson driving, and located the stolen poker chip set inside. Although Anderson told the police that Catlett was the one who had entered the duplex, some eyewitnesses identified Anderson as the man they saw leaving the residence and walking to the van. Anderson informed the police that

Catlett had been driving what he described as a "dark green" Monte Carlo earlier that evening, which surprised Anderson because he had never known Catlett, whom he had known his entire life, to have owned a car. Tr. at 43.

Officer Dan Armentrout went to what he thought to be Catlett's residence, between Crawford and Deming Streets on 14th Street, and knocked on both the front and back doors, but got no reply. Officer Armentrout, who had been informed that Catlett was driving a "green or dark blue type" Monte Carlo, also looked around to see if the car had been parked nearby. Tr. 254. As Officer Armentrout prepared to leave, he noticed a "dark colored" Monte Carlo driving westbound on Crawford Street turn onto 14th Street. Tr. at 255. After the car turned onto 14th Street, it "stopped really quick . . . in the middle of the road, and then . . . pulled over to the right against the curb." Tr. at 256. Officer Armentrout, justifiably suspicious that the driver might be Catlett, radioed for backup while the driver, later determined to be Catlett, "just sat inside" the car. Tr. at 256. Officer Armentrout waited approximately thirty seconds for the backup officers to get closer to the scene, and approached Catlett. As Officer Armentrout stepped off of the porch onto the sidewalk and walked towards the car, Catlett got out, "dropped his head," and walked in between the nearby houses. Tr. at 257. Officer Armentrout shined his flashlight at Catlett and told him to stop and "come here for a second," but Catlett continued to go between the houses. Tr. at 257. Officer Armentrout quickly looked away to see the backup cars arriving, but when he looked back, Catlett had fled. The police began to search for Catlett, and Officer Armentrout soon found Catlett curled up into a ball underneath a pine tree at a nearby church. Officer Kurt Brinegar searched

Catlett and found the bottle of cologne which had been taken during the burglary of the duplex. The police determined that the Monte Carlo Catlett had been driving was the same one stolen from Mr. Yochum on October 8, 2005. The radio in the Monte Carlo had been taken out of the dashboard, and the keys to the Monte Carlo were never recovered.

On October 18, 2005, the State charged Catlett with one count of burglary as a Class B felony and one count of receiving stolen property as a Class D felony. On April 20, 2006, five days before the scheduled start of the jury trial, Catlett filed a motion to sever the charges. Following a hearing held on April 24, 2006, the trial court denied Catlett's motion to sever. A jury trial was held from April 25 through April 27, 2006. At the conclusion of the trial, the jury found Catlett not guilty of the burglary charge, but found him guilty of receiving stolen property, and the trial court entered a judgment of conviction thereon. On May 25, 2006, the trial court imposed a two and one-half year sentence upon Catlett. Catlett filed a notice of appeal on June 21, 2006.

Upon appeal, Catlett first claims that the evidence was insufficient to support his conviction for receiving stolen property. The standard by which we review such claims is well settled: we neither reweigh evidence nor judge witness credibility. Proffit v. State, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), trans. denied. Instead, considering only the evidence which supports the conviction and the reasonable inferences to be drawn therefrom, we determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

To convict Catlett of receiving stolen property, the State was required to prove that he knowingly or intentionally received, retained, or disposed of the property of another person which property has been the subject of theft. Ind. Code § 35-43-4-2 (Burns Code Ed. Repl. 2004). In addition to these explicit elements, it has been held that the State must also prove that the defendant knew that the property had been the subject of theft. Vlietstra v. State, 800 N.E.2d 972, 976 n.7 (Ind. Ct. App. 2003) (citing Gibson v. State, 643 N.E.2d 885, 887 (Ind. 1994)). The test of knowledge is not whether a reasonable person would have known that the property had been the subject of theft but whether, from the circumstances surrounding the possession, the defendant knew that it had been the subject of theft. Id. (citing Gibson, 643 N.E.2d at 888).

The only element which Catlett challenges is that of his knowledge of the stolen nature of the car.[1] Indeed, Catlett boldly proclaims that there is "absolutely, positively no evidence which would suggest that [he] knew that the property had been the subject of a theft." Appellant's Br. at 9. While there might not be any direct evidence with regard to Catlett's knowledge of the stolen nature of the car, we agree with the State that the circumstances surrounding his possession of the car supports a reasonable inference that he knew that the car had been stolen.

Here, Catlett, upon approaching the house where Officer Armentrout was located, turned onto another street, stopped the car suddenly, and pulled the car over to the side of the road. As Officer Armentrout waited for approximately thirty seconds for backup

[1] That is, he does not claim that there was insufficient evidence regarding the facts that the Monte Carlo had been stolen or that he was in possession thereof.

vehicles to arrive, Catlett just sat inside the car. When Officer Armentrout finally approached the car, Catlett got out and dropped his head and began walking between houses. When Officer Armentrout asked to speak to Catlett, Catlett continued to walk away and eventually fled and hid. Although such evidence certainly would not compel a trier of fact to conclude that Catlett knew that the car he had been driving had been stolen, it is sufficient to allow the jury to have inferred that Catlett knew the car had been the subject of a theft. Cf. Dill v. State, 741 N.E.2d 1230, 1232 (Ind. 2001) (holding that, although a trial court should not give a discrete instruction highlighting such evidence, flight and related conduct may be considered in determining a defendant's guilt); J.B. v. State, 748 N.E.2d 914, 918 n.5 (Ind. Ct. App. 2001) (noting, in dicta, that had defendant been charged with receiving stolen property, evidence would have been sufficient to support such a conviction based upon circumstances surrounding defendant's possession of the scooter, including his attempt to flee when seen by the scooter's owner).

Thus, the circumstances surrounding Catlett's possession of the car would allow a reasonable trier of fact to conclude that Catlett indeed knew that the car he had been driving had been the subject of a theft. As this element is the only one challenged by Catlett upon appeal, we conclude that the evidence is sufficient to support Catlett's conviction for receiving stolen property.[2]

[2] Both parties note the proposition of law that the unexplained possession of recently stolen property may support an inference of guilt of theft of that property. See J.B., 748 N.E.2d at 916. As explained in J.B., despite the considerable overlap between the crimes of theft and receiving stolen property, where the State chooses to charge the defendant with receiving stolen property, the unexplained possession of recently stolen property must be accompanied by additional circumstances which support an inference that the accused knew that the property was stolen. Id. at 918. Here, Catlett complains that his possession of the stolen car was not recent. We acknowledge that there is precedent supporting

Catlett also claims that the trial court erred in denying his motion for severance. Indiana Code § 35-34-1-12 (Burns Code Ed. Repl. 1998) reads as follows:

> "(a) A defendant's motion for severance of crimes or motion for a separate trial must be made before commencement of trial, except that the motion may be made before or at the close of all the evidence during trial if based upon a ground not previously known. *The right to severance of offenses or separate trial is waived by failure to make the motion at the appropriate time*.
> (b) If a defendant's pretrial motion for severance of offenses or motion for a separate trial is overruled, the motion may be renewed on the same grounds before or at the close of all the evidence during trial. *The right to severance of offenses or separate trial is waived by failure to renew the motion*.
> (c) If a defendant's motion for severance of offenses or separate trial is granted during the trial, the granting of the motion shall not bar a subsequent trial of that defendant on the offenses charged." (emphasis supplied).

Pursuant to this section, a defendant must make a motion for severance before the start of the trial unless it is based upon a ground not previously known. See Rouster v. State, 600 N.E.2d 1342, 1346 (Ind. 1992). Further, if such a pre-trial motion is denied, the motion "may" be renewed either before or at the close of all the evidence during the trial.

Catlett's argument that his possession of the stolen car eight days after it was stolen was not recent. In Gibson v. State, 533 N.E.2d 187, 189 (Ind. Ct. App. 1989), the court held that the decision of our Supreme Court in Kidd v. State, 530 N.E.2d 287 (Ind. 1988) compelled the conclusion that "recent" means "a lapse of time of less than twenty-four (24) hours." However, in Allen v. State, 743 N.E.2d 1222, 1230 n.11 (Ind. Ct. App. 2001), trans. denied, we noted that "[i]t may be, however, that the holding in Kidd looked to the totality of the circumstances there presented and held that in that case, unexplained possession of stolen property within one to four days following the burglary was insufficient for a burglary conviction." We then observed that twenty-four hours was not necessarily the outer limitation for each and every case. Id. In so doing, we quoted Underhill v. State, 247 Ind. 388, 390, 216 N.E.2d 344, 345 (1966), in which the court observed, "Normally, an elapse of a few hours, or a day or two or even a week under some circumstances would create such an inference [of guilt of burglary], particularly if the property was concealed." We need not further explore the outer limitations of what is "recent" in the present case because Catlett makes only a conclusory assertion that "this was not recently stolen property," and we do not base our determination on the recency of Catlett's possession of the stolen car. Appellant's Brief at 11.

Despite the use of the permissive "may," the statute further explains that the failure to renew a pre-trial motion for severance results in waiver of the right to severance. See id.

In the present case, although Catlett made a pre-trial motion to sever charges, he does not claim, and our review of the record does not reveal, that Catlett ever renewed his pre-trial motion. Thus, Catlett cannot now argue that he was entitled to severance of the charges. See Rouster, 600 N.E.2d at 1346 (holding that defendant who failed to renew pre-trial motion for separate trial at the close of the evidence had waived the issue upon appeal); Brown v. State, 683 N.E.2d 600, 603 (Ind. Ct. App. 1997) (concluding that defendant waived issue of severance of charges by failing to renew his motion for severance even where the State conceded that the defendant would otherwise have had a right to severance based upon his pre-trial motion), trans. denied.

The judgment of the trial court is affirmed.

SHARPNACK, J., and CRONE, J., concur.